IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 7831 of 2007()

CP.137/2007 of J.M.F.C.,TALIPARAMBA
CRIME NO.312/2007 OF THALIPARAMBA POLICE STATION

.....

: PETITIONER/4TH ACCUSED

PAVITHRAN @ SODA PAVITHRAN,
S/O.KELU, 44 YEARS, VADAKKINIYIL HOUSE,
KUTTORI AMSOM, THALORA DESOM, THALIPARAMBA
TALUK, THALIPARAMBA.

BY ADV. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY
S.H.O. THALIPARAMBA POLICE STATION,
THALIPARAMBA, (THROUGH PUBLIC PROSECUTOR OF
THE HIGH COURT OF KERALA).

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7831 of 2007

Dated this the 19th day of December 2007

O R D E R

Application for anticipatory bail. The petitioner is the fourth accused. He faces indictment for offences punishable inter alia under Section 395 I.P.C. The petitioner was not arrested in the course of investigation. Final report has been filed. Cognizance has been taken. Committal proceedings has been registered by the learned Magistrate. The learned Magistrate issued only summons and not warrant to the petitioner. The petitioner has entered appearance through counsel and on two occasions his absence has been excused and the matter stands posted for his appearance. Hence the petitioner has come to this court apprehending that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. As the petitioner is shown as absconding in the final report filed, the petitioner apprehends that he may be remanded to custody. The learned counsel for the petitioner submits that the endorsement that the petitioner is absconding is without any

merit or justification. The petitioner has been around in the locality all along. The petitioner was available for service for summons also. In these circumstances, appropriate directions may be issued under Section 482 and/or 438 Cr.P.C, submits the learned counsel for the petitioner.

2. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate, I find has already exercised his sublime discretion under Section 204 Cr.P.C to issue only a summons and not a warrant. This evidently conveys that the learned Magistrate was not satisfied

about the endorsement on the final report that the petitioner is absconding. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. The learned Magistrate having issued summons to the petitioner under Section 204 Cr.P.C must certainly take that circumstance into account while considering the application for regular bail. Petitioner's application for regular bail, it is evident must be considered in the light of Sukumari v. State of Kerala [2001(1)KLT 22]).

4. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007